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90-1204

No. _____

Supreme Court, U.S.
F I L E D
JAN 23 1991
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

EUGENE P. ECCLI, *Petitioner,*

v.

WILL VON KLEMPERER, *et al., Respondents.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. The district court in granting summary judgment ruled in error that there was no evidence of State action in support of a §1983-related claim of unnecessary use of unconstitutional means to effect facially Constitutional State domestic violence statutes. With approximately 50% of U.S. families effected by similar State statutes, should the Third Circuit ratify an evasion of Constitutional scrutiny of governmental violation of Fourteenth Amendment rights as well as scrutiny of governmental public health related responsibilities for encouragement, coercion, and other complicity in local corruption which fans the flames of the fledgling AIDs epidemic?

2. A process of subjugation by Respondents was alleged in Petitioner's original complaint involving rape, torture and use of powerful mind-controlling drug(s) to coerce "consent" from Petitioner's then-wife, with personal

injury to Petitioner as a result of the alleged conspiracy including economic loss, defamation, and invasion of privacy. At what threshold of personal injury to Petitioner on the one hand, and use of governmentally encouraged unconstitutional means including new biobehavioral control technology which can readily be abused to obstruct justice and to maintain a profitable condition of subjugation amounting to *de facto* peonage on the other, does Petitioner become the only effective adversary with standing to pursue full equitable remedies for civil rights violations in a Federal court?

3. During the initial phase of an explicit discovery strategy Petitioner, acting *pro se*, was in substantial compliance with the requirements for a continuance to complete discovery pursuant to Fed.R.Civ.P. 56(f). Is it an abuse of discretion to grant summary judgment under such circumstances, thereby deciding the issues, without a summary judgment

hearing and with discovery well-short of completion on the theory that relief was unlikely?

4. The Third Circuit ordered filing of and presumably relied on documents submitted by Respondents which were not part of the record in the district court. Is it an acceptable departure from the usual course of judicial proceedings to use information of questionable reliability for a purpose for which it was not intended, especially when it had a tendency to induce a decision on an emotional basis?

LIST OF PARTIES

The parties to the proceedings below were the petitioner Eugene P. Eccli and the respondents Will Von Klemperer, Mark Maletz, Pat DeMarco, Alternatives To Domestic Violence, Coopers and Lybrand, J. Crew, and Popular Club Plan.

All respondents in the proceedings below are also respondents before this Court.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

The Petitioner Eugene P. Eccli respectfully prays that a writ of certiorari issue to review the judgment of the United States Court Of Appeals For The Third Circuit, entered in the above-entitled proceeding on September 25, 1990, and including any prior or subordinate orders and the denial of the petition for rehearing entered on October 25, 1990.

OPINIONS BELOW

The judgment order of the Court of Appeals for the Third Circuit is reported at 915 F.2d 1560, and is reprinted in the appendix hereto, p. 1A, *infra*.

The order and opinion of the United States District Court for the District of New Jersey (Newark) has not been reported. It is reprinted in the appendix hereto, p. 3A, *infra*.

JURISDICTION

Invoking Federal jurisdiction under 28 U.S.C. §1331 and 42 U.S.C. §1983, the petitioner brought this suit in the District of New Jersey (Newark). On December 21, 1989 the District Court entered an order granting respondents' motions for summary judgment. See p. 3A, *infra*.

On petitioner's appeal with jurisdiction under 28 U.S.C. §1291, the Third Circuit on September 25, 1990 entered a judgment order affirming the District Court's decision. See p. 1A, *infra*. An order denying a petition for rehearing and suggestion for rehearing in banc was entered by the Third Circuit on October 25, 1990. See p. 12A, *infra*.

The jurisdiction of this Court to review the judgment of the Third Circuit is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES

FOURTEENTH AMENDMENT: SECTION 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

18 U.S.C. §2 PRINCIPALS

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

42 U.S.C. §1983 CIVIL ACTION FOR DEPRIVATION OF RIGHTS

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other

proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. §1985 CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS

(2) Obstructing justice; intimidating party, witness, or juror

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the rights of any person, or class of persons, to the equal protection of the laws.

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for

the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

STATEMENT OF THE CASE

Petitioner instituted this damage action pursuant to 42 U.S.C. §1983 and 42 U.S.C. §1985. The case is in some respects similar to the Patty Hearst case several years ago. The complaint, filed *pro se* and *per quod*, alleges an ongoing conspiracy to deprive Petitioner and his family of their civil rights. The case involves rape, torture and use of mind-controlling drug(s) to coerce "consent" from Petitioner's wife (since divorced) vigilante activities, de facto peonage and the likelihood of death from AIDs, corruption in County government, terroristic threats, and other offenses. This ongoing pattern of overt acts in furtherance of a civil rights conspiracy under color of State law by a public-private joint venture involves personal injury to Petitioner including invasion of privacy, defamation, intentional infliction of severe emotional distress resulting from the outrageous conduct of the Respondents,

as well as Constitutional torts involving the First, Thirteenth, and Fourteenth Amendments to the U.S. Constitution. The demand for relief, structured to be of collateral benefit to Petitioner's former spouse, includes a request for declaratory judgment because the status-quo was arrived at by illegal means, an injunction to force Respondents to cease and desist, and damages in the amount of $500,000 to be used for rehabilitation of Petitioner's former spouse and her ongoing care.

There is a related case in State court entitled Eccli v. Von Klemperer, *et al.*, Docket No. 32,671 which is now before the Supreme Court Of New Jersey. While that case alleges a common nucleus of operative facts, it was filed before the case in federal district court and the issues on petition for certification/appeal before the Supreme Court Of New Jersey are different in important respects from the questions raised in this Petition.

The details of the alleged conspiracy have not been fully developed at the pretrial stage of this action. Petitioner was not dilatory with discovery, merely careful to avoid injury to innocent persons and slowed by limited funds. Over a period of about three-four months following service of the complaint in this case on Respondents, he partially implemented in a step-by-step fashion an initial discovery strategy in this and the related State court case focused on obtaining relevant information from local, State, and Federal authorities. Recognizing the fear and prejudice on the part of the average citizen about the issues in this case, Petitioner choose a low risk strategy involving subpoenas to law-enforcement related agencies who it was felt may well have made observations as a part of their work and who also had the training and resources to handle a situation involving potential retaliation. To this end the chief of police of Ridgewood, New Jersey was deposed. While his verbal answers to questions did not provide any relevant

information, he did not have an opportunity to review, perhaps amend, and then sign the transcription of his two depositions because of the grant of summary judgment in the case by the district court. Also, a week prior to summary judgment, a stay on further discove was ordered by U.S. Magistrate Stanley R. Chesler. It was ordered despite Petitioner's written opposition pointing out that there was nothing highly unusual about his discovery strategy (the district court later agreed with Petitioner on this point. See p. 10A-11A, *infra*), and that such a stay pending outcome of Respondents' motions for summary judgment might well create a self-fulfilling prophesy. A State subpoena to the Division of State Police in New Jersey resulted in a computer search of files with certain proper names, without success; but they suggested that certain Federal agencies might have some of the information Petitioner was seeking Also, interrogatories in the State court case were issued to all parties in that case who are also Respondents in this Court.

Only two Respondents answered. The others, including Alternatives To Domestic Violence, a department of the County of Bergen, New Jersey refused to answer and the complaint in that case was dismissed in Superior court with a motion to compel answers still outstanding.

Petitioner also made a motion in federal district court to add the United States as a party plaintiff. He argued that this was appropriate where the government stood in responsible relation to a public danger, and in the alternative argued that because of public laws two federal agencies which might have relevant information would not respond to a subpoena unless the United States was a party to the action. Summary judgment was granted by the district court without a hearing. As this discovery-related motion was still outstanding, it was thereby rendering moot by the court. See p. 11A n.4, *infra*.

Petitioner was explicit about his discovery

strategy in his motion papers in the district court proceeding and indicated he wished to continue with discovery pursuant to Fed.R. Civ.P. 56(f) in order to impeach the self-serving denials of Respondents in their motions for summary judgement. Within that timeframe it appeared to petitioner that, pursuant to Fed.R.Civ.P. 11, his signature on a motion or other paper was a certificate comparable to an affidavit in that it represented a good faith effort to be truthful with the recognition that there were sanctions for violation. In his motion for reconsideration with the district court, he corrected this misunderstanding of a technicality on the part of a *pro se* litigant by including an affidavit. This motion summarized and added detail to the discovery strategy he had describ previously in the district court proceeding. He pinpointed critical discovery needs, the financial constraints which slowed discovery, the facts he hoped to obtain, explained why he had not previously discovered the informatio

that he had acted to compel answers to interrogatories in the State court case, and that he had to rely on such information in the short-term as there hadn't appeared to be time to issue another set of interrogatories in the case in district court and receive answers prior to the then-pending return date for summary judgment. Petitioner's request for a continuance was denied.

In June, 1988 an in-house restraining order was entered against Petitioner in a separate action because of a first-time, minor domestic violence offense against his wife (i.e. a first-of-a-kind, non-drug, non-alcohol related incident not requiring medical care during a successful 19 year marriage). In May of 1989, after separation from his wife as a result of the initial events complained of in this case, he attempted to see her on several occasions to explore reconciliation and resolve certain other matters and ended up in contempt of a restraining order. As a result of his being charged

with contempt, he was detained briefly for evaluation at Bergen Pines County Hospital in early August, 1989. He was not committed but rather released on the hospital's own initiative well-short of the maximum time allowed by law for his evaluation. He was diagnosed as not being dangerous to himself or others, no treatment was given during or recommended at the end of evaluation, and any delusions the Superior court felt he might have did not prevent him from standing trial and do not interfere to any significant degree with his ability to get along in society such that either confinement or even outpatient treatment was recommended by the hospital. He is *sui juris* and also, according to an order signed by Hon. Conrad W. Krafte, J.S.C. on November 6, 1989, capable of representing himself *pro se*. The discharge summary from the hospital describes him as not in need of any medication and not merely stable but euthymic, i.e. well in spirit. Despite this, Respondents filed motions during the proceeding in the Third Circuit to introduce documents

written by Petitioner's preliminary evaluators, who in order to facilitate his detention for more extensive evaluation at the hospital, described him as potentially dangerous. These preliminary diagnoses were contradicted in important respects by the hospital upon more thorough evaluation as pointed out above. The documents respondents wished to file were not part of the record in the district court proceeding. Despite this the Third Circuit entered an order on August 13, 1990 denying Petitioner's motion to modify the clerk's prior order which allowed this overstated view of Petitioner by his preliminary evaluators in these documents to be filed.

On June 6, 1990, Hon. Andrew P. Napolitano, J.S.C. indicated that the divorce proceeding that day between Sandra Eccli and Petitioner did not have a preclusive effect on the appeals from the related State court case or the case in federal district court. Petitioner did not make this action a part of a divorce

as that would only ratify the invasion of privacy and intrusion on Constitutionally-protected family rights originally complained of. Also, to use anything like the situation described in the district court or related State court complaints against his spouse might readily be construed as connivance which was not removed from the defenses allowed his spouse by the New Jersey Divorce Reform Act of 1971. Further, a refusal by Petitioner to do anything which would aid or abet a conspiracy against the civil rights of his spouse appears wise as apparently interspousal immunity does not apply to conspiracies to commit an offense against the United States.

The complaint in this case was not filed because of alienation of affections, and the possibility that his spouse might have a sex life following their marriage was not felt to be grounds for a Federal or a State case. Nor did Petitioner complain because he himself had been named previously in a domestic violence complaint and could have

been subjected to punishment including fines and imprisonment even though he was only guilty of a first-time minor offense. Nor has Petitioner argued that his spouse should be prevented from getting a divorce which she freely chooses. What Petitioner actually complained of was that while the domestic violence laws may be facially Constitutional, ostensibly neutral statutes, they are being used for oppression, not as a matter of disproportionate impact, but because they have been applied in this case using unconstitutional means which destroy Constitutionally-protected family rights while aiding a system tantamount to de facto peonage.

The theory of Petitioner's complaint was that the case was justiciable because the injuries to Petitioner were personal, traceable, and redressable. Petitioner did not sue for damages to his spouse but rather filed a complaint *per quod* for injuries to himself resulting not from taking the counts in the complaint piecemeal (see p. 7A-8A,

infra) but viewing them cumulatively as an ongoing pattern of overt conspiratorial acts which resulted in personal injury. He merely structured relief to be of collateral benefit to his former spouse. Petitioner has standing because he has suffered economic injury, public branding of himself and other members of his immediate family, and because of invasi of privacy which effects him personally. There was State action because of overt encour agement and efforts at justification, purporte pursuant to State law, of unconstitutional means. The complaint alleges that a civil instrumentality of the State acted as one of the cooperative forces in a process of subjugation involving Constitutional torts in clear violation of the Thirteenth and Fourteenth Amendments. This conspiracy by Respondents functioning as a public-private joint venture was carried out so as to result in denial of equal protection of Federal and State laws. Many details of this alleged conspiracy were not known to Petitioner at the time of filing his complaint. The com-

plaint accordingly alleged a conspiracy only in conclusory terms, the details being left to the pretrial discovery process, which as described above was prematurely aborted.

The Third Circuit affirmed the district court's grant of summary judgment in a judgment order entered on September 25, 1990 (see p. 1A, *infra*), thereby indicating its opinion that there were neither findings of fact which were clearly erroneous nor was there any error in the conclusions of law in the opinion of the district court. Petitioner filed a timely petition for rehearing and suggestion for rehearing in banc. Several aspects of this petition deserve emphasis:

-- the opinion of the district court indicated that evidence had not been presented with respect to State action. See p. 8A and 9A n.2, *infra*. In fact, the answer to the complaint by counsel for Alternatives To Domestic Violence and another submission

later to the Third Circuit both indicate that this Respondent is a governmental organization. It is a department within the County of Bergen, New Jersey;

-- the other finding was that Petitioner had not presented any evidence to support the conclusory allegations in his complaint. Petitioner did not contest this in the courts below nor does he do so in this Court. What he did argue was that a continuance is normally granted as a matter of course when a party is in substantial compliance with the requirements under Fed.R.Civ.P. 56(f);

-- Petitioner also argued that the other matters mentioned in the district court's opinion are conclusions of law. He further indicated that several of these conclusions were questionable, namely, with respect to Petitioner's standing (see p. 8A, *infra*), lack of a copy of the contract mentioned in the complaint (see p. 10A n.3, *infra*), and that allegedly Petitioner had no right

to continue the action in the faint hope that discovery would reveal favorable evidence (see p. 10A n.3, *infra*). Petitioner pointed out that in his brief before the Third Circuit he had provided many citations from this Court and several Circuits which are in conflict with these conclusions.

The basis for Federal jurisdiction in the court of first instance, the United States District Court for the District of New Jersey (Newark), was 28 U.S.C. §1331.

REASONS FOR GRANTING THE WRIT

1.

Strict scrutiny of State-related intervention in family matters should be maintained. The Third Circuit's decision in this regard is in conflict with the decisions of this Court and other Circuits in a case where the family and public health related issues are of national importance.

According to its own submissions in the proceedings in the district court and in the Third Circuit, Respondent Alternatives To Domestic Violence is a governmental organization. It is a department within the County Of Bergen, New Jersey. This Respondent's actions with respect to Petitioner and his family were done purportedly pursuant to an order from State court. Actions by a State court are State action, Shelley v. Kraemer, 334 U.S. 1, at 14 (1947). Further, Counties are civil instrumentalities of the

State, City of Chicago v. Sturges, 222 U.S. 313, at 323 (1911), and actions by county organizations and officials are State action, O'Neill v. Grayson County War Memorial Hospital, 472 F.2d 1140, at 1143 (6th Cir. 1973).

Acts by Respondent Alternatives To Domestic Violence are therefore subject to Constitutional constraints incorporated in the Fourteenth Amendment, Samuel B. Raymond v. Chicago Union Traction Company, 207 U.S. 20, at 36 (1907). It may not circumvent these constraints by encouragement or other aiding and abetting of the activities of the other non-governmental Respondents which would be repugnant to the Constitution if it had undertaken them directly, Home Telephone & Telegraph Company v. City Of Los Angeles, 227 U.S. 278, at 287, and 291-292 (1915). See also 18 U.S.C. §2, *supra*.

This public organization and the officials associated with any of the acts in this case must show, in order to claim a defense of good faith, that they believed the behavior

they encouraged was legal and such belief was reasonable, Alvarez v. Wilson, 431 F.Supp 136, at 147 (N.D.IL 1977). Significant interference with the family must be supported by sufficiently important State interests, is subject to strict scrutiny, and such interference must be tailored to effectuate only those interests. While facially Constitution State laws may none the less be defective if the means used to effect the State's ends unnecessarily impinge on fundamental family rights, Zablocki v. Redhail, 434 U.S. 374, at 381 and 388 (1978). Unreasonable or arbit inter- ference with certain essentials of interference with certain essentials of liber (e.g. integrity of the family unit, excluding violence as an expressive right other than in self-defense) cannot be dispensed with in the name of experimentation, New State Ice Co. v. Liebmann, 285 U.S. 262, at 280 (1932); Pierce v. Society Of The Sisters Of The Holy Names, Etc., 268 U.S. 510, at 534-535 (1925); Meyer v. Nebraska, 262 U.S.

390, at 399 (1923), because this integrity of the family is protected by the Ninth and Fourteenth Amendments, Stanley v. Illinois, 405 U.S. 645, at 651 (1972); Lovisi v. Slayton, Jr., 539 F.2d 349, at 352/addendum (4th Cir. 1976).

One standard with respect to removal of First Amendment rights is proof of a clear and present danger as perceived by taking into account the gravity of the evil the State wishes to prevent discounted by its improbability, Dennis v. United States, 71 S.Ct. 857, at 864 and 868 (1951). As regards domestic violence, half of all married women will experience a violent episode in their relationship, there does not appear to be a higher than average correlation with standard forms of mental illness, and murder of a spouse is normally the culmination of a series of battering incidents which occur over a period of years, Hutchings, N. The Violent Family, at 63, 70, and 74, New York: Human Sciences Press, Inc. 1988. Yet despite

the fact that 50% of U.S. families can expect to be involved at some point in first time offenses and despite the fact that a substantial number of men have either attempted to kill or actually killed in situations ranging from defense of their country to self-defense in civilian life, the chances of a woman being killed by her husband are less than 1 in 100,000 of the general populatio Peck, E. Domestic Tyranny, at 220, 223, and 224, New York: Oxford University Press 1987.

This is not to make light of a tragic pathology, but merely to point out that it is surprisingly rare. One might ask, since the danger of bodily injury and certainly the danger of death is significantly higher for auto-related accidents, what forms of intervention the State engages in to promote public safety with respect to first time minor offenders and their immediate families beyond fines, higher insurance premiums, and perhaps short-term prison sentences or

temporary suspension of the responsible person's license?

As to domestic violence on the one hand and sexual peonage on the other, judicial procedures are already in place in New Jersey to facilitate in-house restraining orders, eviction of the male, and police protection and even shelter for the woman upon request. What further privacy and family-related Constitutional risks, exposure to AIDs and public health risks, and danger of corruption is acceptable for a marginal increase in social control with respect to first-time minor domestic violence offenders? Beyond advising the woman of the difficulty of in-house enforcement of a restraining order, does the State necessarily have any responsibility beyond perhaps counseling if she decides to try to work things out in a family setting?

AIDs already ranks fifth among diseases in the nation which kill women, and the infection

is not even theoretically curable using known science, AIDs: The Next Ten Years, Newsweek, June 25, 1990, p. 23. Infection over time is statistically a virtual certainty for those with multiple sex partners. With New Jersey already having the highest rate of heterosexual transmission for AIDs in the country according to the medical director of the City of Newark, what alternatives should an organization presumably concerned about women's health and safety encourage among their clients, and at what point can they coerce a woman directly and indirectly as alleged in this case "for her own good", Women and AIDs, New Jersey Sunday Star Ledger, March 25, 1990, section 1, p. 53.

Freedom of association is not Constitutionally mandated with respect to immorality when public health concerns are paramount, Nebbia v. New York, 291 U.S. 502, at 526 n.24 (1933), so protective orders which may exist or be requested in this case cannot

be justified by the right to privacy, thereby holding back discovery.

In an era of increasingly sophisticated biobehavioral control technology, the implications of prior decisions with respect to standing and peonage are in need of clarification.

The allegations in a complaint must be taken as true in deciding on a motion to dismiss for lack of standing, Warth v. Seldon, 422 U.S. 490, at 501 (1975). The peonage Petitioner refers to has been defined as the illegal subjugation by a combination or conspiracy which one can't resist to the will of others with respect to matters a freeman is entitled to control; and this applies not just to physical freedom but to the right to be free in the use of all one's faculties, Hodges v. United States, 203 U.S. 1, at 33-38 (1906). Justice Harlan's views in Hodges were vindicated in Jones v. Alfred H. Mayer, 392 U.S. 409, at 441 n.78.

The all purpose pathetic euphemism for the behavior described in Petitioner's complaint is "socialization". Other evasions include rhetoric about different corporate cultures and pluralism. However, the legislative intent underlying the civil rights laws was explicit that an incident of slavery and subjugation was the abrogation of conjugal rights, Congressional Globe, April 6, 1864, p. 1439, col. 2; and these laws were fashioned to provide protection in situations where a woman was outraged (raped) and the State made no successful effort to afford protection or redress, Congressional Globe, April 3, 1871, p. 428. If Petitioner had been involved in such socialization/subjugation involving his wife, in certain states it would be treated as a very serious offense, Drope v. Missouri, 420 U.S. 162, at 164-171 (1975). Also, mistreatment and mutilation of a person, including their mind which is part of one's body, to impress a sense of inferiority and humiliation is illegal, In re Sah Quah, 31 F. 327, at

330-331 (D.Ak 1886); see also Rehabilitation Of Torture Victims: An Interdisciplinary Treatment Model, American Journal of Social Psychiatry, VII, Summer 1987, p. 162-163.

Facially Constitutional, ostensibly neutral statutes which are used for oppression are Constitutionally defective, Memphis v. Greene, 451 U.S. 100, at 132 n.5 and 134 n.6 (1981). A system of *de facto* peonage, practiced openly in a person's accustomed haunts, implicates both the Thirteenth Amendment and state law, United States v. McClellan, 127 F. 971, at 973 (S.D.GA 1904); State v. Marchand, 545 A.2d 819, at 821-822 (App.Div.NJ 1988), affm'd, 555 A.2d 1122 (S.Ct.NJ 1989). Also, background, culture, age, and any infirmities (such as the partial paralysis of the critical faculties of a person's mind due to drug(s)) are relevant factors in determining the involuntariness of servitude, United States v. Kozminski, 101 L.Ed.2d 788, at 808 and 811 (1988).

Petitioner has not complained about a

prescription for a mild sedative which might have been given to his wife. Rather trauma alone and certainly when coupled with abuse of certain drugs can produce states resembling paranoid schizophrenia. A person's mind could then be controlled, for example, with a combination of neuroleptics and antidepressants, especially if the individual had been suicidally depressed, Katzung, B. Basic and Clinical Pharmacology, at 345 and 349-350, Norwalk: Appleton & Lange 1989. This would account for what Petitioner's wife told him in general terms and what he observed about her behavior over several months during the early phase of the civil rights conspiracy alleged in this case. Without doubt such medical wonders can be helpful to certain people. However, such powerful technology for mind control can be easily abused to obstruct justice (see 42 U.S.C. §1985(2), *supra*). A person can be forced to adjust to conditions of subjugation because such drugs inhibit conditioned avoidance behavior, leaving the mind in a highly susceptible

state.

The likelihood that Petitioner's former spouse could protect her own rights as well as his in such a situation is a relevant consideration with respect to standing, Joint Anti-fascist Refugee Committee v. McGrath, 341 U.S. 123, at 153-154 (1950). Under such circumstances, Petitioner is as a practical matter the only effective adversary, Barrows v. Jackson, 346 U.S. 249, at 259 (1953), reh'g den, 346 U.S. 841 (1953). Also, Petitione is aware that he cannot force his former wife into some kind of reconciliation. However, a claim for relief, involving for example defamation, which exists independently of an action for loss of consortium is not barred because it might have coincidentally supported the now abolished action for alienation of affections, Stickles v. Manss, 36 N.J. Super 95, at 98.

The conspiracy Petitioner complained

of can also be redressed using 42 U.S.C. 1985(3), because such conditions are civilly remediable by persons whose interests are effected, Griffin v. Breckenridge, 403 U.S. 88, at 105 (1971).

The premature grant of summary judgment is in conflict with the Third Circuit's and this Court's Decisions

It is an abuse of discretion to grant summary judgment when discovery is incomplete i.e. when discovery is so limited as to effec a party's basic rights, Long Island Lighting Co. v. Barbash, 779 F.2d 793, at 795 (2nd Cir. 1985); Murrell v. Bennett, 615 F.2d 306, at 311 (5th Cir. 1980). Also, there was no summary judgment hearing in this case despite the fact that it is considered good practice, Season-All Indus., Inc. v. Turkeye Sise Ve Cam Fabrik., A.S., 425 F.2d 34, at 39-40 (3rd Cir. 1970).

The self-serving denials of Respondents in this and the related case in State court (which includes Petitioner's former wife) is an insufficient rationale for summary judgment until discovery is complete, Sames

v. Gable, 732 F.2d 49, at 50-52 (3rd Cir. 1984). A continuance is normally granted as a matter of course in a situation where Petitioner was in substantial compliance with the requirements of Fed.R.Civ.P. 56(f), Radich v. Goode, 886 F.2d 1391, at 1393-1394 (3rd Cir. 1989). As pointed out above, Petitioner did apprise the District court of the status of his initial discovery activities. While he did not do so in an affidavit, he corrected this technical misunderstanding in his motion for reconsideration. A decision on the merits, rather than on technicalities, has been considered the wiser course, Foman v. Davis, 371 U.S. 178, at 182 (1962).

The District court was of the opinion that discovery should not continue because recovery was a faint hope. See p. 10A n.3, *infra*. Petitioner should be entitled to inquire on his own theory of the facts and the law in this case, United States v. 216 Bottles, More Or Less, Etc., 36 F.R.D. 695, at 700 (E.D.NY 1965); United States v. Article

Of Drug, Etc., 43 F.R.D. 181, at 189 (D.DE 1967). As to the lack of a copy of a contract to substantiate certain allegations in the complaint, it could still emerge during discov but even if it does not, a written agreement is not essential to a condition of peonage, Pierce v. United States, 146 F.2d 84, at 86 (5th Cir. 1944), cert den, 324 U.S. 873 (1945).

Discovery has been allowed to enable a plaintiff to establish a claim even when it appears that recovery is very remote or unlikely, Scheuer v. Rhodes, 416 U.S. 232, at 236 (1974). Petitioner should have a full and ample opportunity for discovery, Anderson v. Liberty Lobby, Inc., 477 U.S. 242, at 250 n.5 and 257 (1986), not just a few month with very limited resources, but a period of approximately one year, Celot Corporation v. Catrett, 477 U.S. 317, at 326 (1986).

The Third Circuit's filing of documents not a part of the record is a departure from the accepted and usual course of judicial proceedings which can short-circuit justice.

Since the documents and credibility-related issues were not properly brought before the District court which consequently did not have an opportunity to decide the matter, precedent indicates that on appeal it was not proper for Respondents to expect the Third Circuit to decide on the matter, Life Insurance Company Of North America v. Reichardt, 591 F.2d 499, at 506 (9th Cir. 1979); Adickes v. S.H. Kress & Company, 398 U.S. 144, at 157 n.16 (1970). These documents should have been stricken pursuant to Fed.R.Civ.P. 403, as they confused the issue and their probative value at that point in the judicial proceeding was minimal at best in face of the danger of unfair prejudice, i.e. inducing

a decision on an improper, purely emotional basis.

Even had the documents been filed in the District court proceeding, credibility determinations are a jury function. Credibility is not an issue for summary judgment, Anderson v. Liberty Lobby, Inc., *supra*, at 255. Petitioner is and has been *sui juris* throughout the proceedings in Federal court. Respondents' use of this information for oppression should have been prohibited, Schlagenhauf v. Holder, 379 U.S. 104, at 117-118 (1964).

Respectfully submitted,

Eugene P. Eccli

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36 Wilcox Place
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(201)796-1042
Petitioner, Pro Se

Dated: January 23, 1991

APPENDIX 1

JUDGMENT ORDER OF THE THIRD CIRCUIT

(ENTERED: September 25, 1990)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 90-5212

EUGENE P. ECCLI,
Appellant

v.

WILL VON KLEMPERER,
MARK MALETZ,
PAT DeMARCO,
ALTERNATIVES TO DOMESTIC VIOLENCE,
COOPERS AND LYBRAND,
J. CREW,
POPULAR CLUB PLAN

Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action No. 89-03569)
District Judge: Hon. Maryanne Trump Barry

Submitted Under Third Circuit Rule 12(6)
August 7, 1990

Before: HIGGINBOTHAM, Chief Judge, MANSMANN,
and COWEN, Circuit Judges.

JUDGMENT ORDER

After consideration of all contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby **AFFIRMED.**

Costs taxed against appellant.

BY THE COURT,

A Leon Higginbotham

Chief Judge

Attest:

Sally Myvos, Clerk

SEP 25 1990

APPENDIX 2

GRANT OF SUMMARY JUDGMENT BY THE DISTRICT COURT

(ENTERED: December 21, 1989)

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil Action
No. 89-3569 (MTB)

EUGENE P. ECCLI,

Plaintiff,

v.

WILL VON KLEMPERER, MARK MALETZ, PAT DeMARCO, ALTERNATIVES TO DOMESTIC VIOLENCE, COOPERS and LYBRAND, J. CREW and POPULAR CLUB PLAN,

Defendants.

ORDER

This matter having come before the court on the motion of all defendants except Alternatives To Domestic Violence for summary judgment pursuant to Federal Rule of Civil Procedure 56; the motions of defendants William Von Klemperer, Pat DeMarco, J. Crew, and

Popular Club Plan to dismiss pursuant to Fed.R.Civ.P. 12(b)(6) and, failing that, for an order requiring plaintiff to obtain court approval prior to scheduling depositions and for attorneys' fees; and the motion of plaintiff to add the United States as a plaintiff pursuant to Fed.R.Civ.P. 21, Fed.R.Civ.P. 17(a), and Fed.R.Civ.P. 19(a)(2)(i); and the court having considered the submissions of the parties, including the affidavit of Sandra Eccli, without oral argument, pursuant to Fed.R.Civ.P. 78; and

it appearing that *pro se* plaintiff Eugene P. Eccli ("Eccli") alleges in his complaint: Count 1 -- Invasion of Privacy and Interference with Quiet Enjoyment against defendants J. Crew and Coopers and Lybrand for the monitoring of oral communications at the Eccli home by means of electronic surveillance; Count 2 -- Trespassing, Battery, Aggravated Assault and False Imprisonment against defendants Von Klemperer, Maletz and DeMarco for the abduction of plaintiff's wife and the subse-

quent "sexual assault and torture with electric wires"; Count 3 --Invasion of Privacy, Trespassing and Battery against defendant Von Klemperer and perhaps others for contaminating food in the Eccli home with narcotic drugs; Count 4 -- Intentional Infliction of Emotional Distress against defendant Von Klemperer and others for threatening plaintiff's wife with death and serious bodily injury to herself and her family unless she continued to take narcotic drugs and participate in "sexual marathons" with other named defendants; these threats were also used to induce plaintiff's wife to sign a contract specifying that she had consented to the behavior in Counts 1-3; Count 5 -- False Imprisonment, Intentional Infliction of Emotional Distress and Alienation of Affections against all defendants for uttering threats as in Count 4 and creating "ongoing conditions which lead [plaintiff's wife] to believe it is impossible to escape their destructive domination;" Count 6 -- Battery, Aggravated Assault and False Imprison-

ment against all defendants for torturing plaintiff's wife "with electric wires and/or needles"; Count 7 -- Battery and False Imprisonment against all defendants for administering drugs to plaintiff's wife, leaving her "temporarily and perhaps permanently mentally incapacitated;" Count 8 -- 42 U.S.C. § 1983 claim under the 14th Amendment Due Process Clause against defendant Alternatives To Domestic Violence for using the "shackles of slavery to force [plaintiff's wife] to provide sexual and other services to defendants without any trial;" Count 9 -- 42 U.S.C. § 1983 claim under the 14th Amendment Due Process Clause against all defendants for administering drugs to plaintiff's wife, which had the effect of physically restraining her, without "fair procedures;" Count 10 -- 42 U.S.C. § 1983 claim under the 14th Amendment Due Process Clause against defendant Alternatives To Domestic Violence for failing to allow plaintiff and his wife "an opportunity to present the individual merits of [their

marital?] situation [in court?]; Count 11 -- 42 U.S.C. § 1983 claim under the 14th Amendment Due Process Clause against defendant Alternatives To Domestic Violence for obstructing justice and distorting "the intentions of State law by using Domestic Violence laws in an unconstitutional manner;" Count 12 -- (a) Negligence against defendant Alternatives To Domestic Violence for "not informing plaintiff of a potential suicide of his spouse;" (b) 42 U.S.C. § 1983 claim under the 14th Amendment Equal Protection Clause against defendant Alternatives To Domestic Violence for failing to uphold the New Jersey state domestic violence laws and causing harm to plaintiff by withholding information from plaintiff about his wife; and

the court finding that subject matter jurisdiction over this action is based solely upon the purported federal questions in the complaint[1] and, thus, that there is no inde-

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[1] Complete diversity is lacking. Plaintiff and at least one of the defendants are citizens of New Jersey.

pendent basis of jurisdiction over Counts 1, 2, 3, 4, 5, 6, 7, and 12(a); and

the court finding that because the requirement of standing is met only where plaintiff himself has sustained actual injury, Allen v. Wright, 468 U.S. 737, 751 (1984), reh'g denied, 468 U.S. 1250 (1984); Duke Power Co. v. Carolina Envtl. Study Group, Inc., 438 U.S. 59, 79 (1978); Simon v. Eastern Kentucky Welfare Rights Org., 426 U.S. 26, 38 (1976), plaintiff lacks standing to assert the claims contained in Counts 2, 4, 6, 7, 8, and 9 on behalf of his wife who remains *sui juris*, or the claims in Counts 1, 3, 5, 10, and 11 to the extent that they have not caused injury to him personally; and

the court finding that it is the responsibility of plaintiff to set forth facts suggesting state action on the part of defendants in order to establish a *prima facie* case for his § 1983 claims in Counts 8, 9, 10, 11, and 12(b), West v. Atkins, __ U.S. __, __, 108 S.Ct. 2250, 2255 (1988); Daniel v.

Williams, 474 U.S. 327 (1986); Parratt v. Taylor, 451 U.S. 527, 535 (1981), an obligation which has not been met;[2] and

the court finding that summary judgment will be granted where the moving party demonstrates that there is no genuine issue of material fact, Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); Lyons v. U.S. Marshals, 840 F.2d 202, 204 (3d Cir. 1988); and

the court finding that although the non-moving party in a summary judgment motion must be given the benefit of all favorable inferences that can be drawn from the facts, United States v. Diebold, Inc., 369 U.S. 654, 655 (1962); Meyer v. Riegel Products Corp., 720 F.2d 303, 307, n. 2 (3d Cir.), cert. dismissed, 465 U.S. 1091 (1984), mere allegations by the non-moving party in the form of legal conclusions unsupported by documentation of specific facts are insuffi-

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[2]The only intimation of state action is the notation in Count 8 that defendant Alternatives To Domestic Violence "receives public funds (County and State)." However, the mere receipt of public funds by an organization does not cause its decisions and conduct to rise to the level of state action under § 1983, Rendell-Baker v. Cohn, 457 U.S. 830, 840 (1982); Blum v. Yaretsky, 457 U.S. 991, 1011 (1982).

cient to create issues of material fact and, thus, insufficient to preclude summary judgment, Securities and Exchange Comm'n v. Bonastia, 614 F.2d 908, 914 (3d Cir. 1980); see Fed.R.Civ.P. 56(e); and

the court finding that plaintiff has presented no facts to support his conclusory claims;[3] and

the court finding that an award of attorneys' fees and costs by a federal court is

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[3]Plaintiff relies upon argument, rather than facts, to support his claims. Defendants have submitted an affidavit from Sandra Eccli, plaintiff's wife, in which she categorically denies each and every allegation in plaintiff's complaint. In response, of course, plaintiff maintains that his wife involuntarily signed that affidavit because she lacks the free will to oppose the defendants. However, plaintiff presents absolutely no affirmative evidence. He does not provide the court with a copy of the written contract mentioned in Count 4. He fails to present affidavits or anything else from employees of defendants Coopers and Lybrand, J. Crew, and Alternatives To Domestic Violence, or from any other individuals to corroborate his claims. Moreover, his submissions do not even include any statement from his son, John, who, at the very least, has personal knowledge of the allegations in Counts 1 and 3. While I appreciate the difficulty encountered by plaintiff in obtaining evidence to support his claims, this court will neither investigate his allegations for him nor allow this action to proceed further under Fed.R.Civ.P. 56(f) in the hope, faint though it may be, that discovery will reveal favorable evidence.

warranted only where opposing counsel has acted "in bad faith, vexatiously, wantonly, or for oppressive reasons", Hall v. Cole, 412 U.S. 1, 5 (1973); Ford v. Temple Hosp., 790 F.2d 342, 346 (3d Cir. 1986), a situation which is not presented by this *pro se* plaintiff's inexperience in scheduling depositions;

IT IS on this 20th day of December, 1989

ORDERED that the motion of defendants for summary judgment be, and hereby is, granted on behalf of all defendants; [4] and it is further

ORDERED that the motion of defendants William Von Klemperer, Pat DeMarco, J. Crew, and Popular Club Plan for attorneys' fees is denied.

MARYANNE TRUMP BARRY
U.S.D.J.

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[4] Because summary judgement has been granted, the motions of defendants William Von Klemperer, Pat DeMarco, J. Crew, and Popular Club Plan for an order requiring plaintiff to obtain court approval prior to scheduling depositions and the motion of plaintiff to add the United States as a party plaintiff are rendered moot.

APPENDIX 3

ORDER BY THE THIRD CIRCUIT DENYING PETITION FOR REHEARING AND SUGGESTION FOR REHEARING IN BANC

(ENTERED: October 25, 1990)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 90-5212

EUGENE P. ECCLI,
Appellant

v.

WILL VON KLEMPERER,
MARK MALETZ,
PAT DeMARCO,
ALTERNATIVES TO DOMESTIC VIOLENCE,
COOPERS AND LYBRAND,
J. CREW,
POPULAR CLUB PLAN

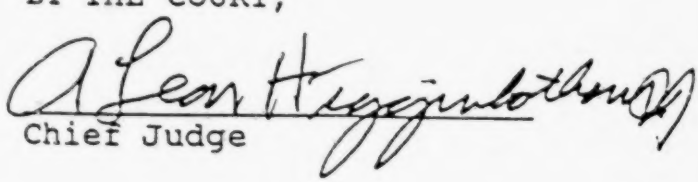
(D.C. Civil No. 89-03569)

SUR PETITION FOR REHEARING

Present: HIGGINBOTHAM, Chief Judge, and SLOVITER, BECKER, STAPLETON, MANSMANN, GREENBERG, HUTCHINSON, SCIRICA, COWEN, NYGAARD, and ALITO, Circuit Judges.

The petition for rehearing filed by appellant in the above entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court in banc, is denied.

BY THE COURT,



Chief Judge

Dated: October 25, 1990